

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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, ID No.
Telephone Number:

Attn:

Refer Reply To:
CC:ITA:B06
PLR-113945-11
Date:
June 13, 2011

&

Administration

Legend:

Parent =

Dates = Date 1, Date 2, Date 3, Date 4, Date 5, Date 6, Date 7,
Date 8, and Date 9

Subsidiaries = Subsidiary 1, Subsidiary 2, Subsidiary 3, Subsidiary 4,
Subsidiary 5, Subsidiary 6, Subsidiary 7, Subsidiary 8,
Subsidiary 9, Subsidiary 10, Subsidiary 11, Subsidiary 12,
Subsidiary 13, and Subsidiary 14

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Subsidiary 5 =

Subsidiary 6 =

Subsidiary 7 =

Subsidiary 8 =

Subsidiary 9 =

Subsidiary 10 =

Subsidiary 11 =

Subsidiary 12 =

Subsidiary 13 =

Subsidiary 14 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

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Date 6 =

Date 7 =

Date 8 =

Date 9 =

Dear _____ :

This ruling responds to a letter submitted by Parent's authorized representatives requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file Forms 970, Application To Use LIFO Inventory Method, for the taxable years ended Dates.

Facts

Parent is the parent corporation of an affiliated group of entities that files consolidated federal income tax returns on a calendar year basis. Included in these returns are Subsidiaries.

Each of the Subsidiaries have used the last-in, first-out (LIFO) inventory method for tax purposes since their inception. During a review of accounting method issues for Subsidiaries by an accounting firm, it was determined that Parent inadvertently failed to attach Forms 970 to its federal income tax return for Subsidiaries' initial tax years ended Dates. Subsidiary 1 should have filed its Form 970 for the taxable year ended Date 1; Subsidiary 2 should have filed its Form 970 for the taxable year ended Date 2; Subsidiary 3 should have filed its Form 970 for the taxable year ended Date 3; Subsidiary 4, Subsidiary 5, and Subsidiary 6 should have filed their Forms 970 for the taxable year ended Date 4; Subsidiary 7, Subsidiary 8, and Subsidiary 9 should have filed their Forms 970 for the taxable year ended Date 5; Subsidiary 10 and Subsidiary 11 should have filed their Forms 970 for the taxable year ended Date 6; Subsidiary 12 should have filed its Form 970 for the taxable year ended Date 7; Subsidiary 13 should have filed its Form 970 for the taxable year ended Date 8; and Subsidiary 14 should have filed its Form 970 for the taxable year ended Date 9.

Parent represents that the LIFO conformity requirement of section 1.472-2(e) of the Income Tax Regulations is satisfied as each of the Subsidiaries' inventory has continually been valued using the LIFO inventory method for financial reporting purposes since the Subsidiaries' inception.

Law and Analysis

Section 472 of the Internal Revenue Code provides that a taxpayer may use the LIFO method in inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary may prescribe.

Section 1.472-3 provides that the LIFO inventory method may be adopted and used only if the taxpayer files with its income tax return for the taxable year as of the close of which the method is first to be used a statement of its election to use such inventory method. The statement shall be made on Form 970.

Under section 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of the time to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I, provided that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Section 301.9100-1(b) also defines an election to include an application for relief in respect to tax, or a request to adopt, change, or retain an accounting method or accounting period.

Section 301.9100-2 sets forth rules governing automatic extensions for regulatory elections. If the provisions of section 301.9100-2 do not apply to a taxpayer's situation, the provisions of section 301.9100-3 may apply.

Section 301.9100-3 sets forth the standards that the Commissioner will use in determining whether to grant an extension of time to make a regulatory election that does not meet the standards of section 301.9100-2. It also sets forth information and representations that the taxpayer must furnish to enable the Internal Revenue Service to determine whether the taxpayer has satisfied these standards. The applicable standards are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interests of the Government.

Under section 301.9100-3(b)(1)(i), a taxpayer that applies for relief for failure to make an election before the failure is discovered by the Service ordinarily will be deemed to have acted reasonably and in good faith. However, the taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested. Additionally, if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election, or uses hindsight in requesting relief, the taxpayer ordinarily will not be considered to have acted reasonably and in good faith. Section 301.9100-3(b)(3).

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the regulatory election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Likewise, when the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making an election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Further, the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would

have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under section 301.9100-3. Section 301.9100-3(c)(1)(ii).

Conclusion:

The information and representations submitted by Parent (and accompanied by a penalty of perjury statement executed by an appropriate party) establish that it and Subsidiary 1 through Subsidiary 14 have acted reasonably and in good faith in this request. Furthermore, granting an extension will not prejudice the interests of the Government. Accordingly, an extension of time is hereby granted for Parent to file the necessary Forms 970 on behalf of Subsidiary 1 through Subsidiary 14. This extension shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to the Forms 970 when they are filed.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Parent's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by Parent and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Sincerely,

Roy A. Hirschhorn
Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure (1)

Copy of letter for section 6110 purposes

cc: